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11 UNITED STATES DISTRICT COURT
12 NORTHERN DISTRICT OF CALIFORNIA
13 SAN FRANCISCO DIVISION
14

15 UNITED STATES OF AMERICA,)	CASE NO. CR 11-0573 JSW
)	
16 Plaintiff,)	GOVERNMENT'S SENTENCING
)	MEMORANDUM
17 v.)	
)	Sentencing Date: August 26, 2014
18 ROBERT MAEGERLE,)	Time: 1:00 pm
)	
19 Defendant.)	
)	
)	
)	

21
22 The United States does not have any unresolved objections to the Presentence Report. The
23 government agrees with the Probation Officer's Sentencing Guideline calculation and her recommended
24 sentence of 36 months imprisonment.

25 The Probation Officer properly calculated the Sentencing Guideline offense level. The
26 appropriate offense level is 28, which is the sum of the base offense level of 6 plus a 22 level
27 enhancement under USSG § 2B1.1(L) for a gain of more than \$20 million but less than \$50 million.
28 This Court has already determined that the conspiracy to misappropriate DuPont TiO2 trade secrets, for

1 which Maegerle was convicted, resulted in a gain of over \$27 million. Because the loss to DuPont is not
2 reasonable calculable, the gain is the appropriate measure. USSG § 2B1.1, cmt. 3(B). Maegerle is
3 accountable for the gains realized through the conspiracy because those gains were within the scope of
4 the joint undertaking and were reasonably foreseeable to him. *See* U.S.S.G. § 1B1.3; *United States v.*
5 *Treadwell*, 593 F.3d 990, 1002–03 (9th Cir. 2010). Maegerle was the key participant in Walter Liew’s
6 effort to sell DuPont technology to the Pangang Group companies. Maegerle, with his years of
7 experience in the TiO2 industry, knew the value of the technology and understood that Chinese
8 companies would pay dearly for it. He is responsible under the Sentencing Guidelines for the full
9 amount of the gain under USSG § 2B1.1.

10 The offense level, therefore, is 28 and Maegerle’s criminal history is category I. This results in a
11 guideline range of 78 to 97 months imprisonment. The government agrees with the Probation Office
12 that the low-end of the range, 78 months, is longer than necessary and that the Court should impose the
13 lower sentence, in this case 36 months.

14 The justification for this variance offered by the Probation Office is supported by both the facts
15 and the law. The Court must take the totality of the circumstances into account under 18 U.S.C.
16 § 3553(a) in determining the appropriate sentence. *Gall v. United States*, 552 U.S. 38, 51 (2007). In
17 support of a downward variance, the Probation Office cites the disparity between Maegerle’s gain and
18 Walter Liew’s gain; Maegerle’s limited knowledge of Liew’s dealings with Chinese government
19 officials; Maegerle’s age and health; the declining health of his wife; Maegerle’s lack of criminal
20 history; his productive career; and the support of his family and friends. Consideration of these factors
21 is supported by the case law. *See, e.g., United States v. Tosti*, 733 F.3d 816, 824 (9th Cir. 2013); *United*
22 *States v. Dowie*, 411 Fed. Appx. 21, 31 (9th Cir. 2010); *United States v. Autrey*, 555 F.3d 864, 873-75
23 (9th Cir. 2009); *United States v. Carty*, 520 F.3d 984, 995 (9th Cir. 2008).

24 The Probation Office also cites Maegerle’s post-verdict acceptance of responsibility and
25 withdrawal of his post-trial motions for a mistrial or a new trial. After he informed the Court that he
26 was withdrawing these, Maegerle entered into an agreement with the government under which he has
27 waived any appeal from or collateral attack on the verdict, judgment or sentence imposed by this Court.
28 A copy of the agreement has been provided to the Court and will be signed by the parties and filed prior

1 to sentencing.

2 Although his post-verdict acceptance of responsibility would not qualify for a downward
3 adjustment under USSG § 3E1.1 because he put the government to its burden of proof at trial, his waiver
4 of appeal warrants consideration under § 3553(a). Maegerle preserved through the trial numerous issues
5 that could be appealed, but he has waived the right to do so. Maegerle does not know what sentence the
6 Court will impose, but has nevertheless agreed to waive appeal from the sentence and judgment. His
7 willingness to accept the consequences of his actions and decisions, including the sentence that will be
8 imposed, demonstrates both remorse and acceptance, notwithstanding his failure to accept responsibility
9 prior to trial.

10 The Probation Officer recommends a sentence of 36 months imprisonment. The government
11 believes that this sentence, although it is a substantial deviation from the low-end of the guideline range,
12 is appropriate for Maegerle because of a combination of his acknowledgment of responsibility by
13 waiving appeal, as well as his age, health, and family circumstances. The government also notes that
14 co-defendant Liew received a significant downward variance and that Maegerle is less culpable than
15 Liew in every respect: he received far less money (\$370,000 as compared to over \$20 million); he was
16 not involved with Chinese government officials; he did not manage or direct the actions of others; he did
17 not commit tax or bankruptcy fraud; and his obstruction was limited to helping Liew fabricate a defense
18 to the civil action filed by DuPont, as compared to Liew's much more extensive obstruction. Maegerle
19 should receive a significantly larger downward adjustment than Liew did.

20 Maegerle once was an upstanding member of the community. He worked for a long time for
21 DuPont and did many good things as an employee. After he left the company, he took advantage of his
22 access to confidential DuPont information and used it for personal profit. This was a serious breach of
23 the law and represents a threat to our country's economic stability. A 36 month sentence is sufficient to
24 deter other similarly situated corporate employees – people with legitimate careers and ties to the
25 community – from committing similarly serious crimes. Few employees would risk 36 months
26 imprisonment for a return of \$370,000 (pre-tax) over five years.

27 A 36 month sentence for Maegerle also promotes respect for the law, especially in combination
28 with the 180 month sentence imposed on Liew. Maegerle and Liew are differently situated and the

1 relevant audiences are different. A 36 month sentence for a 79 year old man with no criminal history
2 who made \$370,000 sends a strong message that the United States takes corporate espionage seriously.
3 But Maegerle was not a one man crime spree, as the Court described Walter Liew. Nor was Maegerle
4 working at the behest of a foreign government. For Maegerle's deeds, 36 months is an appropriate
5 sanction.

6 In addition to a sentence of three years, the Court should order restitution in the amount of
7 \$367,679, to be joint and several with his co-defendants. The government agrees that a fine should be
8 waived because Maegerle, especially after paying restitution, would be unable to pay a fine.

9 Respectfully submitted,

10 MELINDA HAAG
11 United States Attorney

John H. Hemann

12 Dated: August 19, 2014

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14 RICHARD S. SCOTT
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